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**FILED**  
04/10/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0779-R-2022  
Lambert, Kathryn  
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANTS: Dianne Gibby; Richard Gibby; Golden Eagle Ranch of  
Sweet Grass; Lowe Farm LLC; Windbreak Ranch LLC

**CASE 43B-0779-R-2022**  
43B 6945-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Claim 43B 6945-00 appeared in the Preliminary Decree with the following remarks:

A LATE OBJECTION HAS BEEN FILED TO THE POINT OF DIVERSION AND PERIOD OF USE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THE CLAIMANTS FILED A LATE OBJECTION TO ACRES IRRIGATED AND PLACE OF USE SPECIFYING THE DELETION OF THE ACREAGE IN SEC 19 TWP 01S RGE 17E SWEET GRASS THIS WILL BE HEARD AFTER PROPER NOTICE IN THE NEXT OBJECTION LIST.

It appears these remarks are based on the January 17, 1991 Stipulation And Agreement filed in Case 43B-295 during the Temporary Preliminary Decree proceedings. BK & K LLC filed a notice of intent to appear.

In order to discuss the “late objections” and the notice of intent to appear, an Order Consolidating Case and Setting Scheduling Conference was issued on December 12, 2022 setting a January 17, 2023 scheduling conference. The claimants did not appear at the scheduling conference. On January 25, 2023 BK & K LLC filed an unconditional withdrawal of its notice of intent to appear. The January 30, 2023 Court Minutes, Order Entering Defaults, Order Setting Deadline For Claimants To Show Cause Why Claim Should Not be Amended Pursuant to 85-2-248(9)(a), MCA, and Order Updating Caption And Mailing states:

Claim 43B 6945-00 appeared in the Preliminary Decree with the following remarks:

A LATE OBJECTION HAS BEEN FILED TO THE POINT OF DIVERSION AND PERIOD OF USE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THE CLAIMANTS FILED A LATE OBJECTION TO ACRES IRRIGATED AND PLACE OF USE SPECIFYING THE DELETION OF THE ACREAGE IN SEC 19 TWP 01S RGE 17E SWEET GRASS THIS WILL BE HEARD AFTER PROPER NOTICE IN THE NEXT OBJECTION LIST.

It appears these remarks are based on the January 17, 1991 Stipulation And Agreement [“1991 Stipulation And Agreement”] filed in Case 43B-295 during the Temporary Preliminary Decree proceedings. A copy of the 1991 Stipulation And Agreement was attached to the December 12, 2022 Order Consolidating Case And Setting Scheduling Conference. The 1991 Stipulation And Agreement states that the period of use should be changed from “APRIL 1 TO NOVEMBER 1” to “MARCH 1 to NOVEMBER 4”. The reference to “point” of diversion in the first remark appears to be a clerical error, that “period” of diversion should have been referenced, and consequently, that the period of diversion should be changed from “APRIL 1 TO NOVEMBER 1” to “MARCH 1 to NOVEMBER 4” as well. For the second remark, paragraph 10 of the 1991 Stipulation And Agreement mentions the place of use but does not include an action item to make any changes to the place of use or maximum acres. This remark is erroneous and will be removed without further proceedings. Therefore, it is

ORDERED that the deadline is **February 28, 2023** for Dianne Gibby, Richard Gibby, Golden Eagle Ranch of Sweet Grass, Lowe Farm LLC, and Windbreak Ranch LLC to show cause in writing why the Court should not proceed with amending the period of use and period of diversion on claim 43B

6945-00 as described above pursuant to section 85-2-248(9)(a), MCA,. If no additional information is filed by February 28, 2023, the Court will proceed with amending the claim as detailed above.

Nothing was filed by the claimants.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the period of diversion and period of use are each APRIL 1 TO NOVEMBER 1. The period of diversion and period of use should each be MARCH 1 TO NOVEMBER 4. The remark concerning the late objection should be removed.

2. As there is no basis for the “late objection” remark concerning the acres irrigated and place of use, the issue remark should be removed as erroneous.

3. The Preliminary Decree also includes the following remark issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 18.00 GPM PER ACRE.

AT THE TIME OF THE CLAIMED PRIORITY DATE, IT APPEARS THAT THE PLACE OF USE WAS PART OF AN INDIAN RESERVATION.

Exceeding the flow rate guideline by 1.00 GPM is minimal and does not merit further review. The possible priority date issue identified in the second remark was not pursued by objection. Absent an objection, the remark does not merit further review. Both issue remarks should be removed without further proceedings.

#### CONCLUSION OF LAW

The information in the claim file is sufficient to contradict and overcome the prima facie

claim and sufficient to resolve or remove the issue remarks without evidentiary hearing.  
Sections 85-2-248(3) and (9), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### **Service via USPS Mail:**

Dianne Gibby  
Richard Gibby  
Windbreak Ranch LLC  
PO Box 944  
Big Timber, MT 59011

Golden Eagle Ranch of Sweet Grass  
% Charles H. Raches, Jr.  
6600 Tepee Ridge Rd  
Bozeman, MT 59715

Lowe Farm LLC  
1201 HWY 10 E  
Greycliff, MT 59033

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 6945-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** GOLDEN EAGLE RANCH OF SWEET GRASS  
% CHARLES H RACHES, JR  
6600 TEPEE RIDGE RD  
BOZEMAN, MT 59715  
  
DIANNE GIBBY  
PO BOX 944  
BIG TIMBER, MT 59011  
  
RICHARD GIBBY  
PO BOX 944  
BIG TIMBER, MT 59011  
  
WINDBREAK RANCH LLC  
PO BOX 944  
BIG TIMBER, MT 59011  
  
LOWE FARM LLC  
1201 HWY 10 E  
GREYCLIFF, MT 59033

**Priority Date:** DECEMBER 31, 1879  
**Type of Historical Right:** DECREED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD  
**Flow Rate:** 5.50 CFS  
  
IN A STIPULATION IN CLAIM FILE 43B 130381-00, THE PARTIES AGREED THAT THE FLOW RATE IN THIS CLAIM SHALL BE MEASURED AT THE POINT WHERE THE DITCH WITH THE POINT OF DIVERSION IN NWNWSE SEC 25, TWP 01S, RGE 16E, SWEET GRASS COUNTY CROSSES THE SOUTHERN BOUNDARY OF THE NE SEC 24, TWP 01S, RGE 16E, SWEET GRASS COUNTY

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.  
**Climatic Area:** 2 - MODERATELY HIGH  
**Maximum Acres:** 134.00  
**Source Name:** BRIDGER CREEK  
**Source Type:** SURFACE WATER  
**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSE	25	1S	16E	SWEET GRASS

**Period of Diversion:** MARCH 1 TO NOVEMBER 4

**Diversion Means:** HEADGATE  
**Ditch Name:** OSTRUM DITCH  
**Period of Use:** MARCH 1 TO NOVEMBER 4  
**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	95.00		NW	19	1S	17E	SWEET GRASS
2	9.00		NE	19	1S	17E	SWEET GRASS
3	30.00		NE	24	1S	16E	SWEET GRASS
<b>Total:</b>	<u>134.00</u>						